

APPEAL NO. 93160

A contested case hearing was held in (city), Texas, on February 3, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not prove, by a preponderance of the evidence, a causal connection between her work related fall on (date of injury), and the aggravation of her liver condition. Accordingly, he denied any benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp.) (1989 Act). Claimant complains that the hearing officer did not present the evidence in an unbiased manner, that she was misled by her attorney, that certain medical evidence was "falsely stated" and, generally, that the evidence supports her claim for benefits. Respondent asserts that the evidence supports the decision of the hearing officer and asks that it be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer, we affirm.

The issue presented for determination at the contested case hearing was whether there was a causal connection between the claimant's liver condition and an injury she sustained in a fall at work on (date of injury). Addressing the first matter complained of in the claimant's appeal, we have reviewed the evidence of record and find that it is fairly and adequately set forth in the hearing officer's Decision and Order. The evidence consisted of the testimony of the claimant and her husband and a considerable number of medical records. We are not able to address the assertion that the claimant was somehow "misled" by her attorney; however, we observe from our review of the record that her attorney vigorously presented her claim and produced considerable evidence reflecting her position.

The claimant had worked for the employer, a self-insured independent school district, for approximately 6 years when, on (date of injury), a chair she was sitting in caught on some wires as she pulled forward resulting in her falling and striking the right side of her abdomen on the edge of a desk. She states she felt nauseated and subsequently went to the doctor, (Dr. C). The narrative of a medical report of this visit to Dr. C. indicates that claimant had a "history of chronic active hepatitis" and that she fell at work injuring her "right upper quadrant" and that she stated "she had a significant amount of pain there and was very concerned because of her history of hepatitis, so she came right over." Dr. C. noted "no bruising or abrasions over the ribs although she is tender to palpation along the right costal margin." Dr. C indicated that her "symptoms and level of discomfort here in the office seem out of proportion to anything that is externally obvious on physical exam" and indicated his concern about the "possibility of hepatic hematoma or rupture." X-rays were ordered and a report dated "3-27-92" from (Dr. M) states:

A moderately severe degree of hepatosplenomegaly can be seen. No focal hepatic or splenic lesions are seen. Specifically, no hepatic or splenic hematoma or laceration can be seen. There is no evidence of subcapsular hematoma.

The claimant testified that she was not able to work after (date of injury), because she became tired and fatigued very easily and that it felt like flu only 10 to 20 times worse. She states she is not able to do many things she could before, such as jogging, gardening work, heavy housework, and going on trips. Her husband testified that she tired very easily now and the many activities they did before were now considerably limited.

Entries in medical records rather convincingly establish a history of hepatitis dating back to 1978 when she apparently contracted the disease while working in a hospital. A report of a (Dr. S) dated May 20, 1992, reflects that the claimant had evidence of hepatitis A and hepatitis C in the past. A report dated "6-15-92," dictated by (Dr. F) relating to claimant's fall at work and indicating a chief complaint of "feeling tired," states the claimant "had an episode of icteric hepatitis in 1978" while working in a hospital and that in 1981, several months after she received a two unit transfusion during child birth, "she began feeling bad and was diagnosed with hepatitis." The report goes on to indicate that "recent labs reveal hepatitis A total is positive," that hepatitis B studies are negative, and that "[h]epatitis C antibody is positive," and to recommend "looking for other etiologies of liver disease, such as alpha I antitrypsin deficiency, Wilson's disease, hemochromatosis, and autoimmune hepatitis." A July 8, 1992 report from (Dr. P) indicates that the claimant has chronic active hepatitis. A report of Dr. C dated August 11, 1992, noting her chronic active hepatitis, states that the claimant "has severe liver dysfunction and would be unable to work secondary to severe malaise and fatigue." An earlier letter report signed by Dr. C states that the claimant's fall "undoubtedly (sic) injured or aggravated an already enlarged and unhealthy liver which had been this way for quite some time secondary to her chronic active hepatitis."

A medical record dated "1/30/92" from Dr. C, a visit the claimant testified was because of chest pain and a feared heart condition and not related to any other ailments, states as follows:

(Claimant) who presents today with chief complaint of having some midback pain and also has some general malaise and fatigue. She was worked up in the hospital for panic attacks and some chest pain. She had a STRESS TEST which rules out.

Medical reports in the record of the contested case hearing reflect differing views on the causal relationship between the incident of March 27th and the claimant's physical condition. The following are pertinent excerpts from the various reports:

Offered by Claimant:

A "to whom it may concern" statement of Dr. C dated June 24, 1992 indicates that "[t]his fall undoubtedly injured or aggravated an already enlarged and

unhealthy liver which had been this way for quite some time secondary to her chronic active hepatitis."

A November 11, 1992 statement from Dr. D provides "[t]here is no question that the injury, though not nearly as bad as I would have anticipated, did cause some damage which fortunately has at least partially resolved."

Offered by the Carrier:

A January 22, 1993 statement from Dr. M. states "(claimant) asked me to write you this letter to offer an opinion as to the fall contributing to her liver disease. As (claimant) and I discussed, her hepatitis C was unrelated to this injury. However, it is my opinion that this fall certainly may well have contributed to (claimant's) discomfort."

A November 2, 1992 statement from (Dr. G), a gastroenterologist who examined the claimant, provides, "[b]ased upon the information I have available, as well as my examination of the (claimant), I cannot attribute any portion of her current problem to a work related injury."

Based upon the evidence before him, the hearing officer found that:

- 3.The only symptoms exhibited by the Claimant after her fall on (date of injury), are similar, if not identical, to the symptoms of hepatitis.
- 4.The Claimant fell at work on (date of injury), and hit her abdomen on the edge of a desk. The fall did not aggravate her pre-existing liver condition (hepatitis).

The hearing officer concluded that the claimant did not prove by a preponderance of the evidence, a causal connection between the fall and the aggravation of her liver condition. There is sufficient evidence of record to support his findings and conclusion although it is possible that the conflicts in the evidence could reasonably result in different inference being drawn. However, this is not a sound basis to reverse a fact finder. See Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Unless his determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, his decision should be affirmed. In Re Kings Estate, 244 S.W.2d 660 (Tex. 1951); Cain v. Bain 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

A claimant has the burden of proof to establish that a claimed injury arose out of his or her employment. See Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969); Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 Tex. Civ. App.-Beaumont 1976 writ ref'd n.r.e.). A causal connection between any injury and the employment must be established. See Texas Workers' Compensation Commission Appeal No. 93011, decided February 19, 1993. Here, there was sufficient probative evidence from which the hearing officer could find that the claimant's asserted injury, generally resulting in her being tired, fatigued, suffering malaise, and having a lack of energy, was caused by her documented hepatitis. The examination and x-rays performed on the day of the fall did not indicate any bruising, hematoma or lacerations, and she had complained of similar symptoms (fatigue and malaise) a couple of months before the incident of March 27th. The medical opinions, although there was contrary medical evidence, which discounted any connection between her condition and the fall of March 27th, together with this other evidence, forms a sufficient foundation for the hearing officer's decision. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge